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Ch.3 Thailand's Snail's Progress toward Good Environmental Governance

1. Introduction

The Environmental Kuznets Curve (EKC) hypothesis holds that environmental quality declines during early stages of economic development, but improves in later stages. de Bruyn and Heintz (1999) summarizes the underlying causes into five categories: (a) increase in the marginal benefit that consumers can derive from a good environment, and their changes in consumption activities and preferences; (b) institutional and policy changes; (c) increase in environmental efficiency through technological and organizational changes, often backed by increased capital stock; (d) structural changes in the economic sector, i.e. from agricultural and industrial sectors to the service sector; and (e) international relocation of pollution-intensive industries.

Early empirical studies, such as Shafik (1994) and Grossman and Krueger (1995), show that industrial countries passed through the turning point at per capital income between US\$ 3,000-10,700 for sulfur dioxide, and between US\$ 3,280-9,600 for suspended matters. Developing countries can potentially gain advantage of backwardness in environmental policy in the early stage of economic development by, for example, obtaining more accurate scientific knowledge on the causal relationship between pollutants and environmental impacts and adopting less pollution- and resource-intensive technology and production processes than those that industrialized countries have developed (O'Conner, 1994). This implies that they can pass through the turning point at lower per capital income and avoid the kind of serious pollution that industrialized countries had gone through.

Thailand has enjoyed rapid economic growth since the late 1980s, due first to agro-industrialization and then to attraction of foreign direct investment (FDI) for export-oriented manufacturing. The share of manufacturing in gross domestic products has been increased as manufacturing exports boomed (Figure 3-1). Following the Asian economic crisis the country not only increased its overall exports, but also diversified their export economy with regard to destination countries (Figure 3-2). Rapid industrialization has caused a variety of environmental problems, ranging from loss of forest and aquatic resources, frequent floods and water shortages to industrial pollution, illegal dumping and improper treatment of wastes. On the other hand, it has caused an increase in per capita income up to US\$4,000, the turning point of per capita income from degradation to improvement in the EKC hypothesis.

To protect the environment and local people's livelihood, a number of social and environmental groups have emerged to protest against state projects and industrial plants. Amid an enthusiastic democratic movement in the first half of 1990s, the government created democratic institutions and institutions for the environment, and gave people the right to involve in protecting the environment.

These institutions brought the potential to empower communities, to strengthen alliances among protesting groups and with others, and to convince the government to make direct negotiation with civil society groups. Yet in many cases the government adopted a cabinet resolution solely in response to rising pressures, but did not take it seriously and initiated no concrete follow-up action.

However, a number of recent events provided some hope for policy changes in recent years. The Community Forest Bill was finally approved by parliament in 2007 after more than ten years of debates, negotiation and neglect. In 2010 Prime Minister Abhisit made a serious commitment and took measures to solve the Map Ta Phut industrial pollution.

In this chapter, I will review the development and interplay of institutional and social capacity for the environment in Thailand to show how the development has gone back and forth. Then I take the Community Forest Bill and the Map Ta Phut industrial pollution as cases to show how these developments have given influence to the problem solving in action, and to explore why the government took different approaches to the two controversial issues in Thailand.

2. Analytical Framework

The theoretical explanations of the EKC recognize that institutional and policy changes are not automatically accompanied by economic growth and increase in per capita income. They then implicitly assume that a democratic capitalist state with free elections results in inclusive policy-making processes.

However, this assumption does not hold true in many developing nations for several reasons. First, the government does not always guarantee political rights, freedom of opinion, and secret ballots (Torras and Boyce, 1998). Second, the election may not reflect changes in the constituents' policy preferences. People may vote for their representatives by their ethnicity rather than political agenda (Collier, 2009). In Thailand, those who depend for a living on the informal sector were mainly recruited into politics through the vote bank systems of electoral organization, in which candidates rely on village heads and other locally influenced people to deliver the people's votes (Phongpaichit and Baker, 2009). Vote buying is a common phenomenon. Third, industrial lobbying may exert such a strong influence in the policy-making process of the representative democracy that decisions are skewed even if the government obtains accurate information on environmental pollution and damages (Aden and Ahn, 1999). Fourth, people may not have any concern about environmental degradation and may undervalue environmental risks unless they obtain, understand, and share accurate knowledge on environmental pollution and damages in a timely manner. Finally, governments can choose centralized, hierarchical, and closed administrative institutions of environmental decision-making that do not always meet local environmental needs and ensure community rights for environmental assets.

To address such deficiencies of the electoral and parliament democracy with regard to environmental conservation and sustainable development, social capacity and legal literacy should be enhanced. It entails creating a social and political environment that encourages actors to identify problems and to develop solutions by themselves, to experience capacity development, and enables local people to exercise their power in the public sphere (Evans et al, 2005).

Community empowerment is the key to social capacity development. It leads to creating social space in which the community's claim can be heard and has impact upon decision-making process. It is defined as a process in three phases: (a) building community power to solve problems independently, (b) building community power to negotiate cooperation with outside agencies, and (c) building community power and network to claim and protect community rights (UNDP Thailand, 2003). In Thailand, it is seen as an instrument for people to combat the bias of centralization, demand public goods and defend their rights within a wider political arena.

Social capacity is enhanced in tandem with development of institutional capacity. Institutional capacity includes all measures that strengthen governmental structures to meet the demands of sustainable development, as well as ones that create these capacities in cooperation with civil society. It constitutes an enabling environment where citizens' can voice their concerns and where their claims can be heard and negotiated on, and where interests and alternatives can be balanced in a fair and transparent manner (UNDP Thailand, 2003). A higher level of institutional capacity provides a solid base for sustainable development capacity, and a higher level of social capacity can be a basis for a higher sustainable development capacity within civil society (Table 3-1).

However, even proponents of environmental conservation may have many different, often conflicting views. In a democratic setting, a higher level of social capacity combined with a low level of institutional capacity may result in irreconcilable conflicts of interests.

To find a way out of this dilemma, priorities should be given to help identify ecological sustainability as a generalizable interest. By attaching one set of generalizable interests to the sum of humanity, basic democratic freedom enables environmental democracy to be a moral priority independent of non-global collective identities (Mason, 1999).

In this regard, to what extent civil society can identify ecological sustainability as a generalizable interest and government can create an enabling environment is a key factor in evaluating the state of environmental governance in developing nations.

3. Institutional Capacity Building for the Environment

3.1 1992 Legislations

Thailand had some legislation for pollution control at the early stage of economic development, including the Factory Act 1962, Preserving and Improving Environmental Quality Act 1975 and the

Board of Investment's (BOI) regulation on environmental impact assessment (EIA) in 1981. However, these legislations were not effective in addressing the problems of a worsening state of the environment.

His Majesty the King's speech in 1989 expressed grave concerns about environmental degradation in the country and thus encouraged the government and the private sector to take more serious action for the preservation of the environment (1). Eventually this led to the identification of environmental conservation and quality of life as one of its three national priorities in the Seventh National Economic and Social Development Plan under then Prime Minister Anand Panyarachun, and passage of the Enhancement and Conservation of National Environmental Quality Act 1992 (Environmental Protection Act). The Pollution Control Department (PCD), the Office of Environmental Policy and Planning (OEPP) and the Department of Environmental Quality Promotion (DEQP) were established under the Ministry of Science, Technology and Environment (MOSTE) to be in charge of implementing this Act. It empowered the National Environment Board to designate pollution control areas to localities that were affected by pollution problems and that such problems might be aggravated to cause health hazards to the public or adverse impact on the environment quality so that the government takes tougher measures to control pollution. The Factory Act 1962 was also revised so that the Department of Industrial Works (DIW) under the Ministry of Industry was empowered to inspect the plants. The Energy Conservation Promotion Act was also enacted in order to require large buildings and plants to conduct energy audits and to prepare energy conservation plans and to provide financial support for their conservation activities. To manage financial support, the Environmental Conservation (ENCON) Fund was created under the National Energy Policy Office (NEPO).

With these legislations, the government increased the budget of three departments under the MOSTE, and established two new funds: the Environmental Fund and the Energy Conservation Fund. In addition, it concentrated the environmental budget to the MOSTE that was formerly dispersed among various government agencies (Figure 3-3).

These changes in the budget allocation and institutional arrangements helped to implement policy measures and actions for managing the environment in severely polluted areas. To manage water pollution, for example, PCD acquired the authority to build sewerage and perform on-site inspection and sampling of commercial buildings. The OEPP takes charge of checking and approving EIAs.

However, these new environmental institutions were severely hampered from two lines. First, EIAs were rarely required, and were not available for inspection by public even if submitted. The BOI has rejected few, if any, projects on environmental grounds (Forsyth, 1997). The OEPP also approved almost all the EIAs of the government-initiated development projects even without

holding public hearing and providing information on the project and possible environmental impacts, claiming that the Environmental Protection Act does not require it. This inaction on the part of the government angered affected local communities, which led to fierce protests against development projects, as seen in the coal-fired power plant projects in Prachuap Khiri Khan Province in 1999 and the Thai-Malaysian gas pipeline and separation plant project in Songkhla Province in 2002 (Mori, 2003a).

Second, new institutions generated confusion concerning authority and budget. The Public Works Department resisted the budget transfer of sewerage and solid waste management to the PCD, causing three years of delay in the budget transfer. The Environmental Protection Act gave plant inspection authority to the PCD, but in reality the DIW and Industrial Estate Authority of Thailand (IEAT) kept it under their control on the ground that they have authority to give the operational license. This rendered it difficult for the PCD to inspect the plants and layout of the Samut Prakarn Wastewater Management Project that would treat both industrial and domestic wastewater (Mori, 2006).

3.2 The 1997 Constitution

Widespread corruption among the political elite and party politics, followed by the uprising in May 1992 against the military-controlled government, fueled the democratic movement in Thailand that gained momentum from the mid-1990s onwards. Urban people called for a more accountable, corruption-free political system.

In response to these movements, the speaker of the House of Representatives initiated to set up the Democracy Development Committee in 1994, which finally proposed to revise and amend the constitution in order to reform the election system and to eradicate vote buying. The government, which was controlled by parties predominantly relying on the rural electorate, established the Constitution Drafting Assembly in 1996 that consisted of 99 members being 76 deputies elected by citizens of 76 Provinces, and 23 academicians from higher education institutes. The Asian economic crisis pushed both members of parliament and senators to pass the draft and to make it effective promptly (Suehiro, 2009).

With the upsurge of discourse of democratization in Thai society, the 1997 Constitution aimed at changing the political structure from a representative democracy towards a more participatory democracy (Aphornsuvan, 2007). This change can be seen in several sections of the constitution, allowing people to participate in the process of appointment of independent commissions, such as the Election Commission, the Administrative Court and the Parliamentary Ombudsman. In the same line, it grants local people and communities the right to participate in natural resource management and preservation of the quality of environment. Furthermore, it allows people to recall

certain members of parliament and ministers and to propose draft bills.

The 1997 Constitution also holds provisions that are favorable for affected people and communities that aim to protect the environment and their livelihoods. Section 56 requires EIAs with comments from independent organization prior to the operation when permitting any project or activity that may seriously affect the quality of the environment. It also protects people's right to sue a state agency, state enterprise, local government organization or other state authorities to perform their duties. Section 58 ensures people's free access to government information, and section 59 to government information, explanation and reasons before permission is given for the operation of any project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning people or local community. Section 59 also ensures their right to express opinions at public hearings.

The 1997 Constitution clearly stated that the state shall decentralize powers to localities and shall promote local self-government at the provincial level where people express their will to establish their provincial self-government (Section 78), mandates plans and process for continual development of decentralization (Section 284). To implement these sections, the government enacted several laws and regulations in 1999. The Imposition of Plans and Steps for Distribution of Power to Local Administrative Organizations Act was enacted to delegate responsibility for more service provision to local governments, including infrastructure projects such as roads, public utilities and public buildings, and management and conservation of natural resources and environment. The Regulations on Local Personnel Administration Act was enacted to allow local governments to decide hire and promotion of officials and staff without ad-hoc intervention of the central government, with the aim of enhancing deep-rooted loyalty of the officials to mayor (Mori, 2003b).

The mechanism for budget/subsidy proposal was changed in 2003 so that local governments have a reasonable degree of autonomy in designing service delivery. Most subsidies that had previously been tied to specific functions/programs were grouped into sectoral block grants, which allow local governments more flexibility. The local revenue was 15% and 13% of the government's total revenue in the fiscal year 2000 and 2001 respectively, but was mandated to increase up to 35% in 2006 (2). Local governments are allowed to collect and decide the rate of local taxes, though the range of tax and its amount are still restricted.

The 1997 Constitution also required having laws that enabled local governments to manage, preserve and exploit the environment (Section 290). These laws shall constitute the basis for decentralized environmental management.

3.3 Bureaucratic reorganization

Backed by the World Bank-funded and Chulalongkorn University-made proposal, the Thaksin government (2001-2006) adopted a bureaucratic reorganization in 2002 that including the establishment of a stronger environmental ministry. The MOSTE was dissolved and the Ministry of Natural Resource and Environment (MONRE) was established so that the environmental ministry became independent from science and technology ministry. Besides three departments that had been previously subsumed under the MOSTE, MONRE took over the Forest Department from the Ministry of Agriculture, the Department of Mineral Resources from the Ministry of Industry, and newly created departments in charge of ground water resources, marine and coastal resources, and greenhouse gas management (3). In addition, the Department of Energy Development and Promotion was reorganized to be the Department of Alternative Energy Development and Efficiency under the newly established Ministry of Energy and be in charge of development and diffusion of renewable energy, as well as energy conservation.

The reorganization increased the amount of share of budget allocated to MONRE. At the same time, budget allocation within the department has been significantly changed. The share of budget allocated to the original three departments shrank due to a higher budget allocation to water, groundwater and natural park departments (Figure 8-3). This shrink became more apparent in 2004 when the Thaksin government started the fiscal transfer to local governments through the Central Fund and the Revolving Fund instead of through ministerial budget, which resulted in a dramatic drop of the budget for the Office of Natural Resource and Environmental Policy and Planning (ONREPP).

However, it needs careful examination to evaluate whether the bureaucratic reorganization and change in the budget allocation would change the main philosophy governing forest management from exploitation toward conservation.

3.4 The 2007 Constitution

The 2007 Constitution which was drafted following the 2006 military coup against the Thaksin government further acknowledged people's rights and improved descriptions in favor of informed participation to public works in the section 57, though it principally aims to block strong political party and leader as Thai Rak Thai (TRT) Party and Thaksin from taking over the government again. Section 85 gives the government the obligation to act in compliance with the land use, natural resources and environment policies. To avoid confusions as seen in the Thai-Malaysian gas pipeline projects, the second paragraph of section 67 bans industrial projects considered "severely harmful" until four activities have been undertaken: EIA, health impact assessment (HIA), public hearings within the community, and an opinion by an independent expert agency. In addition, it enables

people to take legal action to force the government to adhere to the people's rights. Furthermore, to facilitate people's direct political participation, section 163 reduces the number of signatories required to propose a bill to parliament from fifty to twenty thousand, and give obligation for the House of Representatives and the Senate to call the representative to state the principles of the bill and for the non-standing committee to appoint representatives to be its members by not less than one-third.

4. Social Capacity Building for the Environment

4.1 Emergence of influential non-governmental umbrella organizations

In the early 1990s, local villagers started protests against state projects such as dams, power plants, and state forest concessions and designation of conservation forest areas to community land. In the meantime, environmental non-governmental organizations had been established and expanded their networks to protest them. The Assembly of the Poor was also established in 1995 as an umbrella non-governmental organization that comprises existing groups related to controversial dams, forest, slums, state projects, work illness, alternative agriculture and small-scale fisheries, covering all the regions of Thailand. It was remarkable in its capacity of mobilizing campaign and fighting against exploitation and inequity in a number of social situations and material contexts, and of enacting through a range of media a cultural, ideological, and discursive battle over the exercise of power. It has initiated several rounds of mass protest rallies in Bangkok since 1996. Its ninety-nine days of mass demonstrations in Bangkok in 1997 led to the direct negotiation with the government and finally resulted in cabinet resolutions accepting all the Assembly-demanded 122 grievances and establishing a 1.2 billion baht fund that would be spent to compensate villages that were affected by dams and other large development projects.

This success in both gaining legitimacy and obtaining compensation is attributed to several factors (Missingham, 2003). First, the Assembly was faithful to the specific grievances and aims of each local stakeholder group that joined the network. It compiled all their grievances of each group with the list of demands to the government. In addition, it agreed to a social contract to support the petitions of every member group and not withdraw or drop out in the event that its particular demands were satisfied.

Second, the Assembly described the rally as a democratic social movement and appealed democratic right as a means of gaining social justice in order to lend legitimacy to the rally. To keep the support, it committed to nonviolence among its members.

Third, the strategic occupation of symbolized place and symbolic actions gained media coverage and won media support. Supportive media worked effectively in disseminating information about the Assembly to a wider public. With considerable coverage and support in the

mass media, the government and high-ranking officials were forced to acknowledge the Assembly's claims, to recognize their legitimacy as a political actor and to make negotiations with them.

Fourth, the Assembly demonstrated middle-class support for the Assembly to put political pressure on the government.

Fifth, the political consciousness of villagers who joined the collective protests was transformed in the process of struggle. Assembly advisors, as well as their invited university lecturers and prominent lecturers gave lectures, which enhanced protestors' capacity to access and interpret useful information about state policy, laws, regulations, human rights and official procedure to petition and representation. This developed their idea and knowledge to represent, delegate and petition their opinions and rights to local and central authorities.

4.2 Backlash amid the economic crisis

To manage the economic crisis, the Democrat-led coalition that took control of the government in November 1997 adopted the IMF-imposed policies that aimed to pursue export-oriented growth. It completely turned the stance to the Assembly and rural protesters, attacking their legitimacy, rejecting their demands, and canceling many of Chavalit's cabinet resolutions that allow highland minority groups to remain in reserved watershed areas if they could prove prior settlement (4). On behalf, it set up committees to monitor the problem, but with no concrete action.

This political environment forced the Assembly of the Poor to take a defensive approach, for its members' resources, including their energy and enthusiasm, were running low. The Assembly fell back on the local organizational structure that had always been its foundation, and initiated the strategy of a concerted array of local protests. Though large-scale mass rally at the protest sites the movement continued to won media coverage, but failed to gain any response from the government.

On the other hand, the Chuan government (1997-2001) initiated the pilot projects of Local Agenda 21 program, with the assistance of Sweden and Japan. The program aimed to make use of the newly decentralized system to enhance local government capacity in the environment. While adopting a participatory approach, it centered on urban municipality and depended heavily on central government subsidies in its implementation. It did not contribute substantially to enhancing social capacity in general (Tonami and Mori, 2007), and did not provide opportunity to have a generalizable interest between urban and rural people, though a small number of people who had good relation with the mayor might have benefitted from it.

Frustrated with their failure to obtain compensation, the Assembly changed the strategy to demonstrate that their ultimate concern was the environmental value and fishing ecology of the Moon River that provided common benefits to the Thai society, rather than compensation that could be considered as selfish interest (Missingham, 2003). It gave up the petition for compensation and

called for decommissioning of the dams, or at least to open the gates during the rainy season when the fish migrate. Some Bangkok-based organizations, such as the Confederation for Democracy, students groups, and senators-elect welcomed this change and joined the rally in 2000, proposing them to establish a network of different social groups, especially urban middle-class groups to shore up their deteriorating image and falling public support. The World Commission on Dam (WCD)'s study on the Pak Moon Dam in late 2000 resulted in backing the anti-dam movement's stance by internationally confirming what local people had been claiming and admitting that the dam was not economically justifiable.

In response, the Chuan government ceased its aggressive stance and commissioned a committee. The committee called for a four-month sluice gate opening for Pak Moon and Rasi Salai Dams, compensation for Sirinthorn Dam villages, postponement and environmental impact assessment of the proposed Prong Khun Pet, Lam Dom Yai and Hua Na Dam projects, and issuance of land ownership certificates for villagers in reserved forests and National Parks (5). To abide by the recommendation, the government announced that it would open all sluice gates on the Rasi Salai Dam for two years, but made no other commitment.

4.3 Fallout and revival

The deadlock was temporally resolved at the outset of the Thaksin government (2001-2006). To win at the general election in 2001, as well as to defend himself against being forced to step down by the Constitutional Court, Thaksin cultivated populist support from various kinds of groups. He held a luncheon for leaders of the Assembly of the Poor, which had carried out large demonstrations in Bangkok with people demanding that the Pak Moon Dam floodgates be opened. He also visited the sites of conflict over environment: the two coal-fired thermal power plant projects in Prachuap Khiri Khan Province, and the pipeline project in Songkhla Province.

In response, the Assembly publicly announced that they would mount a campaign and gather signatures to support calls for pardon should he be found guilty. After the frustrated Assembly's long march and protests in 2001, Thaksin put pressure on prosecutors to drop charges against the Assembly members, and made a cabinet resolution for a four-month opening of the dam gates in 2001. He finally made the cabinet resolution in 2004 to open the dam's sluice gates for four months starting from May each year, balancing fish migration season and electricity demand.

However, the social capacity has been seriously hampered by Thaksin's change in political style. After he had avoided to be forced to step down at the Constitutional Court, he started to offer himself as the vehicle through which the wishes of the people could be transformed into action on the part of the government. He quickly implemented the three point electoral programs of 30 baht health care, agrarian debt relief and village funds, which met the exact demands of poor villagers

after the economic crisis. To secure his electoral support for the 2005 election, he made a series of tours and gave instant approval for projects, using vastly expanded central fund under his own control which he had created by reform in the budget process (Phongpaichit and Baker, 2009). On the other hand, he avoided arrangements with civil society organizations (CBOs) that might place him under some obligation to deliver against his promises. He also devalued the importance of parliament and neutralized the checks-and-balance bodies of the 1997 constitution. Both CBOs and parliament gradually lost the function of intermediary between the people and the state, and their presence at public space where discourses are created.

4.4 Disbanded solidarity among social organizations

The Democrat-led Chuan government successfully made the middle class distrust the villagers. Middle-class people, especially Bangkokians regarded the Assembly of the Poor as paid mob, manipulated by opposition parties to oust the government, or that its NGO advisers were funding by foreigners wanting to interfere in Thailand's internal politics (6), and took them as opportunists. Thaksin's policies as well as his political style threatened the privileged position of the Thai business elite and middle class in setting political agenda. They felt anxious about empowerment of rural mass under the Thaksin period. They supported the People's Alliance for Democracy (PAD)'s anti-Thaksin demonstration and even supported the coup in the expectation of restoring their political influence. Divide and distrust between the middle-class and the villagers and informal mass became serious during the Thaksin administration.

After Thaksin had been ousted, fierce conflict arose between pro-Thaksin and anti-Thaksin groups within the central politics as well as society in general. The Democratic Party and other anti-Thaksin parties gained votes from urban middle class and Southern provinces, but failed to win the first general election under the 2007 Constitution. The People's Power Party, most of whose parliament members originally hailed from the Thai Rak Thai Party, getting votes from North and Northeast provinces, won the election. This signified a deepening and increasingly irreconcilable divide between urban middle class and the rural poor.

Moreover, this magnified the division among the poor and marginalized people. Pro-Thaksin group felt empowered by the Thai Rak Thai scheme, partly through the very impact of the programmes, partly through the impression that Thaksin and his party were responsive to their demands, and partly because the scheme positioned each citizen in an equal and direct relationship with the state (Phongpaichit and Baker, 2009). Many CBOs felt betrayed by Thaksin's commitment in the election campaign in 2000, becoming hostile to him and joined in anti-Thaksin groups. They joined mass non-violence rally initiated by the People's Alliance for Democracy that led to two-months occupation of the airports and stepping down of the Somchai government (2008). The

Democrats-led coalition took over the government, but the United Front for Democracy Against Dictatorship (UDD), an alliance of pro-Thaksin groups, launched a mass rally, which led to clashes with security force. As the battle became fierce, increasing number of the groups lost their interest in the environment and in ecological issues, and left the umbrella NGOs such as the Assembly of the Poor to join either of the two groups. Once-existed unity and common interest among the poor was almost lost, which posed a major obstacle to their battle over institutions for environment and their livelihood (7).

5. How Does Capacity Development Affect Controversial Environmental Conflicts?

What impacts have changes in institutional and social capacity had in solving environmental conflicts? How have rising environmental conflicts changed environmental governance in Thailand? This section takes the three controversial environmental disputes to examine these changes and impacts.

5.1 The Thai-Malaysian gas pipeline and separation plant project

Villagers adjacent to the Thai-Malaysian gas pipeline and separation plant project reinforced their resistance against the prime minister's decision that the gas pipeline project would go ahead over a new route. They pointed to violations of the 1997 Constitution, including the government's signature on the contracts before any public hearings or EIA were conducted.

However, it took time for the government and politicians to get accustomed to and to adjust the existing institutions to the completely new constitution (Mori, 2005). A public hearing was held in 2000, but it turned into violence because police blocked protesters from entering into the hearing, and the committee ended the hearing within 15 minutes with full support from participants (8). In 2001, the OEPP suddenly approved the EIA report in 2001 despite its eight-time rejection for the lack of comprehensive plans to tackle social impacts, disregarding the independent expert panel's rejection on the study of adverse social impacts and the mitigation measures for distorting facts. The OEPP was accused of approving the EIA only to help the project meet the contract deadline (9). After all, the government started construction in 2004.

The government's disregard of environmental and social impacts continued in the construction period. The government stripped the land of its waqf status, paving the way for it to be turned into a construction site against the will of the local villagers (10). This has deepened their distrust of the government, leading to continuous protests against developments project around the country.

5.2 Community Forest Bill

The death of 350 people in the flash floods in Southern Thailand in 1988 incited the

government to ban logging throughout Thailand from 1989 onwards. Yet the logging ban merely replaced logging by illegal imports, commercial plantations and tourism development due to increasing demand for construction materials under rapid urbanization and for tourism. The government had previously announced the national forestry policy in 1985, which calls for 25% of the country's total land area to be conservation forest composed of national parks, wildlife sanctuaries, Class 1A watersheds, and environmental protection areas. In the name of protecting forest coverage, the Forest Department granted concessions to private company to invest in commercial plantation, and hotels and other facilities in the designated national parks, both of which would reap higher revenues for the department. In the process, the Forest Department disregarded local people's traditional entitlement over community-managed land. This raised massive protests by farmers, especially ethnic minorities, which raised concern of the Ministry of Interior that pursued control over forest dwellers (Ganjanapan, 1997). Farmers, especially ethnic minorities in highland areas, were often thrown into jail for farming in national forest or even merely gathering non-timber forest products as usual, resulting in forced relocation for illegal encroachment. This has made them lose their livelihood, and accelerated marginalization.

When the 1997 Constitution was enacted, Northern NGOs collected the signatures of over 50,000 eligible voters, proposing their Community Forest Bill to the legislature, and asking it to be passed. However, the Forest Department was dead set against community management, and it produced a bill of its own that provided for rehabilitating degraded land under its own management and reforestation under state control. The debate on these points led to public hearings throughout the country, changes in the bill, and finally cabinet approval. With significant change in the text, especially addition of the description that carries a maximum 15-year jail term and a maximum fine of 300,000 baht for encroachment on forest reserves, illegal logging, poaching, the House of Representatives passed the bill in 2001 (11). But the Senate changed substantive articles to prohibit human settlements in protected forests, fearing the bill would encourage encroachment. It was then delayed after the Senate's term expired.

The Community Forest Bill was finally approved by the interim Thai parliament in 2007, ten years after the villagers' long march to push for the adoption of a people's version of the bill. Regardless of the 2007 Constitution, the Act limits community rights to original forest dwellers with strict guidelines for the use of protected forest, though it accepts the legal right of communities to preserve and manage forestland surrounding their communities. This resulted in exclusion of about 20,000 communities scattered on the rim of protected forests countrywide because it limits eligibility to original dwellers to those who have lived in the forest for at least 10 years before the bill is promulgated (12). It also prohibits logging in protected community forest, despite a community having access to the resources within a protected area.

However, this bill has not been ratified yet. The National Legislative Assembly members recognized that the law suppresses community rather than benefit them and submitted a petition to the Constitutional Court to examine whether the law is in conflict with articles 66 and 67 of the new 2007 Constitution, (13). This has prevented the parliament to ratify the bill (Fisher, 2009).

5.3 Industrial Pollution at Map Ta Phut

Followed by the success in natural gas exploitation at Gulf of Thailand, the Map Ta Phut Industrial Estate was created as a part of the Eastern Seaboard Development Program that was initiated in the Fifth National Economic and Social Development Plan (1981-1984). It began with a total area of 672 hectares, but with the booming of petrochemical industry, expanded to 1,200 hectares. In addition, another two private industrial estates were located next to the Map Ta Phut Industrial Estate, with a total area of 488 hectares. More than ninety industrial plants are located in these three estates, consisting of oil refinery, petrochemical, chemical, fertilizer, steel and iron. Hazardous waste treatment and disposal was discovered in 1999 due to frequent illegal dumping and fierce protests against its location nearby farmland.

As soon as several plants started operation, people suffered from various kinds of pollution, especially air and water pollution, and odor. They caused health damages, which led to hospitalization of a great number of teachers and students of the Map Ta Phut Pittayakarn School in 1997 and 1998. The rates of diseases related to respiratory system, nervous system, reproductive system, muscle system and metal disorder have reached an alarming level and cases of leukemia have increased. Exposure to volatile organic compounds (VOCs) such as benzene, styrene and xylene were suspected as a cause of these diseases (Tera et al, 2005).

However, the government took no other action than the relocation of Map Ta Phut Pittayakarn School and Map Ta Phut hospital. Although PCD admitted that some serious pollution *incidents* had occurred, IEAT and DIW kept assuming that there was no *routine* pollution. The National Environment Committee (NEC) also turned down the proposal to designate Map Ta Phut as a pollution control zone on the ground it would hurt investment climate. Residents were still forced to suffer from various health damages.

In order to prove *routine* pollution, environmental NGOs, with support from Global Community Monitor, initiated an environmental monitoring project to focus on gathering evidence of widespread toxic exposure by industrial air pollution in 2003. They employed a simplified sampling method that had been verified as a credible method for air sampling by US EPA. Five-point, five-month sampling identified a total of twenty different toxic chemicals as a source of air pollution, detected at least six and up to twelve VOCs and sulphur compounds in each sample, and proved at least two toxic chemicals in the samples were in excess of one or more health

protective standards or US EPA annual ambient standards (Buakamsri et al, 2005). A Rangsit University survey also found that water sources in 25 communities around the industrial estate were seriously contaminated by heavy metals (14).

Residents and NGOs stepped up their protests when new large-size coal-fired power plants had started operation, and the government approved additional eighteen petrochemical plant locations in the industrial estate. They criticized industries of discharging emissions beyond carrying capacity even under the condition that each plant complied with emission standards, and demanded the designation of a pollution control area.

This protest, together with the approval of Prime Minister Surayud (2006-2008) to tackle the environmental problems, prompted the government to take serious action. The NEB set up a sub-panel to study the health impact, and requested the PCD to set emission standards for nine VOCs and to impose its compliance as a condition to permit plant expansion and location. But it failed because no plant could comply with it, which would threaten industrial location. Instead, NEB drew up a five-year action plan for environmental management with fifty-eight environmental management projects in 2007. In addition, the IEAT and the DIW secured a budget for installing pollution monitoring equipment and for setting up a pollution auditing and monitoring centre. These actions stopped leaks of VOCs at 92 of 100 points in the production process, reduced nitrogen oxide (NO_x) emissions by 6,600 tons against a target of 2,879 tons per year, and sulphur dioxide (SO₂) by nearly 7,000 tons against a target of 9,920 tons (15). For areas outside Map Ta Phut, 226 VOC leak points have been fixed from a total of 272, though reduction of NO_x and SO₂ emissions was much less against the target.

However, these reductions have not fundamentally resolved the problem. The PCD has initiated Pollutant Release and Transfer Registers (PRTR) project since 2008 because Industrial Ministry has not disclosed a list of the chemicals factories use and the level of pollutants they emit. Still, the PCD obtained little, if any information because the project is conducted on voluntary rather than mandatory basis (16).

Taking advantage of democratic institutions created under the 1997 Constitution, residents filed a complaint with the provincial administrative court against the Industry Minister and the NEB for failing to declare Map Ta Phut a pollution control area. The Provincial Administrative Court ordered the NEB to declare the Map Ta Phut areas a pollution control area, which led to its declaration in May 2009. In response, local administrative organizations in the Map Ta Phut area completed drafting of a pollution reduction plan that consisted of wastewater and air pollution treatment projects, creation of "green zones" and strengthening local environmental protection and pollution monitoring networks to obtain budget from MONRE and Industrial Ministry (17).

Another local NGO filed a complaint with the administrative court for suspending the operating

permits of 76 industrial projects, including 14 projects that have been granted government permits to continue construction. Citing NEB's decision to declare pollution control area, the Central Administrative Court ordered the suspension of operating permits for 76 industrial projects for ministries' negligence to pass the necessary implementation laws required by Section 67 of the 2007 Constitution, such as legal framework of HIA and independent expert agency. The Ministry of Industry soon appealed to the Supreme Administrative Court, which ruled that 11 of 76 projects frozen by a lower court injunction because of pollution concerns could proceed. To promulgate implementation laws on HIA and independent expert agency, the government set up a four-party panel consisting of the government, business, academics and community representatives headed by former Prime Minister Anand Panyarachun. The panel proposed that 18 harmful activities would be subject to both EIA and HIA in the environmentally sensitive areas, but the NEB shortened the list of harmful activities to 11 and approved it, saying that government's priority was not the list but a study into buffer zones and the level of toxic discharge absorption in local communities (18). This shortened list led to the Central Administrative Court's ruling to allow 74 earlier-suspended projects to go ahead while it ordered the termination of the operating permits of other two projects, requiring operators to implement both EIA and HIA.

Residents were extremely dissatisfied with this ruling and prepared a massive rally urging to back the list of harmful activities to 18, which had been proposed by the four-party panel, and an appeal with the Supreme Administrative Court, asking for its overturn.

5.4 Impacts on the institutional and social capacity

These cases suggest that institutional capacity has not been enhanced in tandem with social capacity development once the enthusiasm for seeking democracy had been cooled down. On the one hand, the emergence of a middle class has rendered little, if any to obtain wider support for turning the ecological crisis into an issue of generalized interest across classes. On the other hand, the business and political elite put pressure to the government so that they could take advantage of the environmental movement to expand their vested interests while avoid solving the root causes of its environmental problems that contradicted with their interests. The Community Forest Bill that was adopted by the Thai interim parliament in 2007 aimed primarily at recovering ecological benefits—the benefits that ecologically minded elite and middle class gain at the expense of local communities' traditional entitlement over natural resources, and thus their sustainable livelihoods. There is little, if any policy measures to deal with the root cause of deforestation. The ruling of the Central Administrative Court on the Map Ta Phut case forced the government to list up harmful activities that would be subject to both EIA and HIA in the environmentally sensitive areas, but the government succeeded in convincing the Central Administrative Court to set ruling in favor of them.

In addition, it has accelerated development projects in neighboring countries, including hydro-dams, coal-fired power plants, gas pipelines and industrial estates. This is in consistent with the interests of business elites and middle class in expanding their business while avoiding environmental disputes, but at the expense of livelihoods and ecological crisis there.

This implies that Thailand has paved a way from the “lower institutional and social capacities” to “higher social capacity while keeping institutional capacity low” in the Table 8-1. Despite of the ruling of the Central Administrative Court on the Map Ta Phut case, the government does not dare to revise any basic environmental laws and regulations, including the Enhancement and Conservation of National Environmental Quality Act 1992 and the Factory Act 1992. The Abhisit government took further commitments, checking 200 factories that fell on the list of 11 harmful activities and were granted operating permits before the 2007 Constitution took effect, pushing industrial operators to develop a buffer zone around factories, and ordering ten projects that fall into 11 projects but were not subject to 76 earlier-suspended projects to complete EIA and HIA within 180 days. But it is obvious that these commitments will not address the root cause of the problem.

6. Conclusions

This chapter employs a framework for interaction between social and institutional capacity and evaluate the development of social and institutional capacity in Thailand. Main findings can be summarized as follows. First, democratic institutions have been developed amid the enthusiasm for seeking democracy and created public space for the poor and the marginalized people to voice their concerns, which have enhanced social capacity for good governance. Second, stronger political influence of business and political elite after the democratization has blocked further enhancement of institutional capacity, which made the government avoid solving the root causes of its environmental problems wherever it contradicted with their interests. Third, combination of higher social capacity and lower institutional capacity has generated social division, making it extremely difficult to obtain wider support for turning the ecological crisis into an issue of generalized interest across classes. Finally, Thailand’s recent accelerated development in neighbouring countries generates ecological and social crisis there and poses a challenge of how to created regional environmental governance to integrate environmental concerns into such development.

Notes

1. “A national disgrace we cannot ignore,” Bangkok Post December 13, 2003.
2. This share has never been reached at last.

3. The Forest Department was divided into the Department of National Park, Wildlife, Plant Conservation and the Forest Department, for Senate voted to move the agencies that administer conservation to the new ministry while keeping those dealing with exploitation under the Ministry of Agriculture and Cooperatives.
4. The government revoked the Chavalit cabinet's resolution to compensate villagers adversely affected by dams and ruled out any further retrospective compensation for dam construction. It approved the controversial construction of Kaeng Suea Ten dam and resurrected the Prong Khun Pet dam projects. In 1999, it set out to discredit the Rasi Salai villagers and let police charge leaders and groups (Missingham, 2003).
5. "Government gives way to most protester demands," Bangkok Post, July 26, 2000.
6. See, for example, Supara Janchitfah, "City folks must share blame over dam crisis," Bangkok Post August 13, 2000.
7. Sirikul Bunnag, "Divisions impoverish Assembly of the Poor" Bangkok Post December 14, 2010.
8. Ploenpote Atthakor and Vichayant Boonchote, "Mob rampages as panel approves B28bn project," Bangkok Post, October 22, 2000.
9. Anchalee Kongrut, "OEPP under heavy fire for EIA approval," Bangkok Post, December 8, 2001.
10. "Islamic office urged to put a halt to project," Bangkok Post, January 19, 2008.
11. "Community Forest Bill gets approval," Bangkok Post, November 9, 2001.
12. Apinya Wipatayotin, "Community Forest Bill passed," Bangkok Post, November 22, 2007.
13. Supara Janchitfah, "Flaws in the Forestry Bill," Bangkok Post, February 3, 2008.
14. Apinya Wipatayotin, "Map Ta Phut water unfit for home use," Bangkok Post January 23, 2007.
15. Yuthana Praiwan, "PTT plans to invest B10bn to help turn Map Ta Phut green," Bangkok Post May 24, 2007, and Aranee Jaiimsin, "Map Ta Phut industrial estate beats targets," Bangkok Post December 20, 2007.
16. Apinya Wipatayotin, "Pollutants in Rayong to be made public," Bangkok Post November 8, 2008.
17. Apinya Wipatayotin, "Map Ta Phut pollution proposal drafted," Bangkok Post May 9, 2010.
18. Apinya Wipatayotin and Manop Thip-Osod, "Abhisit 'clears the air' over Map Ta Phut impasse," Bangkok Post September 15, 2010.

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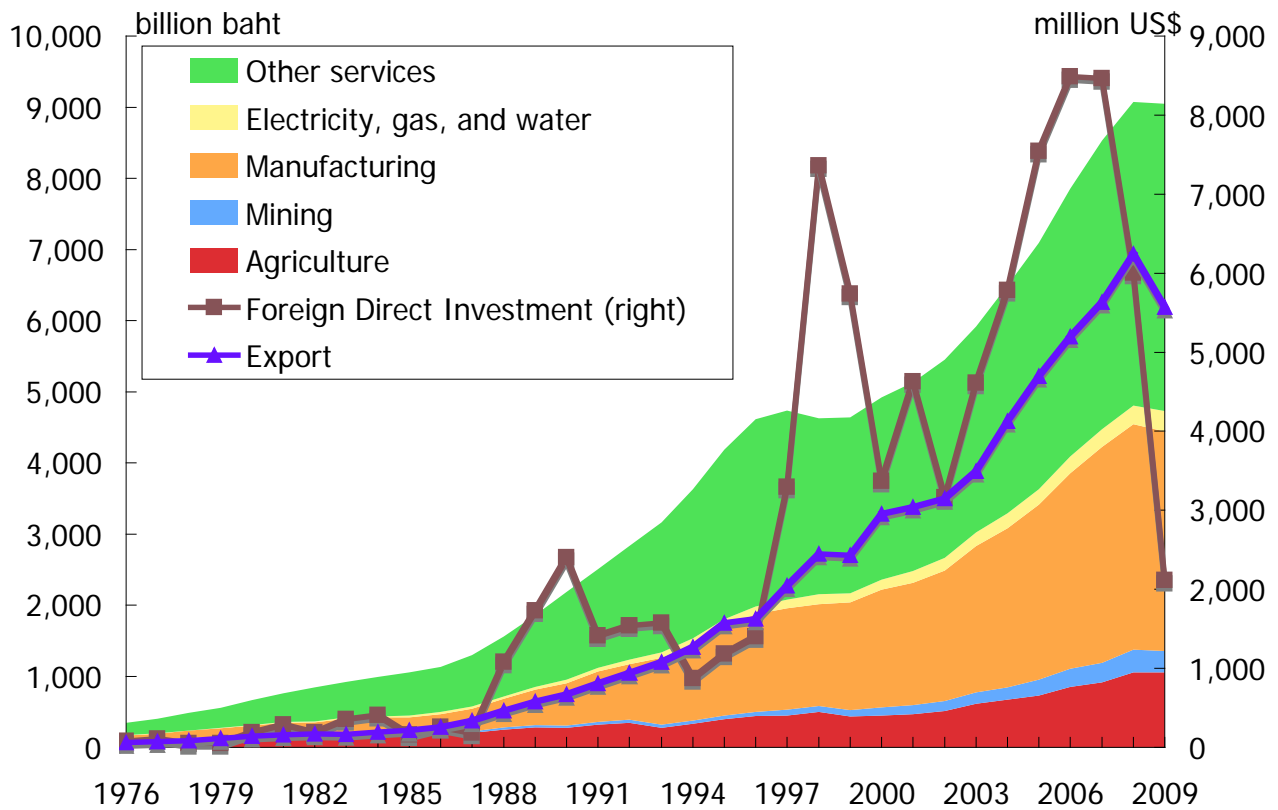
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Table 3-1 Theoretical Framework for Interaction between Social and Institutional Capacity

		Institutional Capacity	
		Higher	Lower
Social Capacity	Higher	(A) Dynamic governing	(C) Voluntary governing, or conflict among communities
	Lower	(B) Active government, or without bottom-up	(D) Passive government, or dictatorship

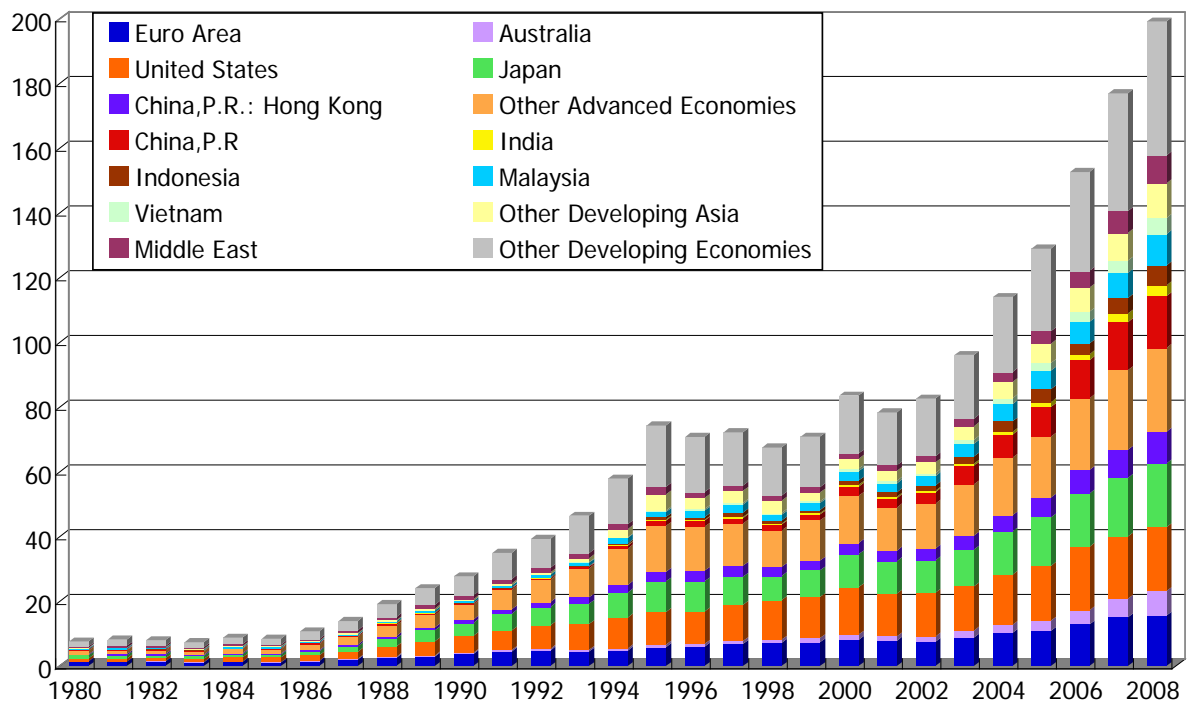
Source: author.

Figure 3-1 Industrial Structure and FDI in Thailand



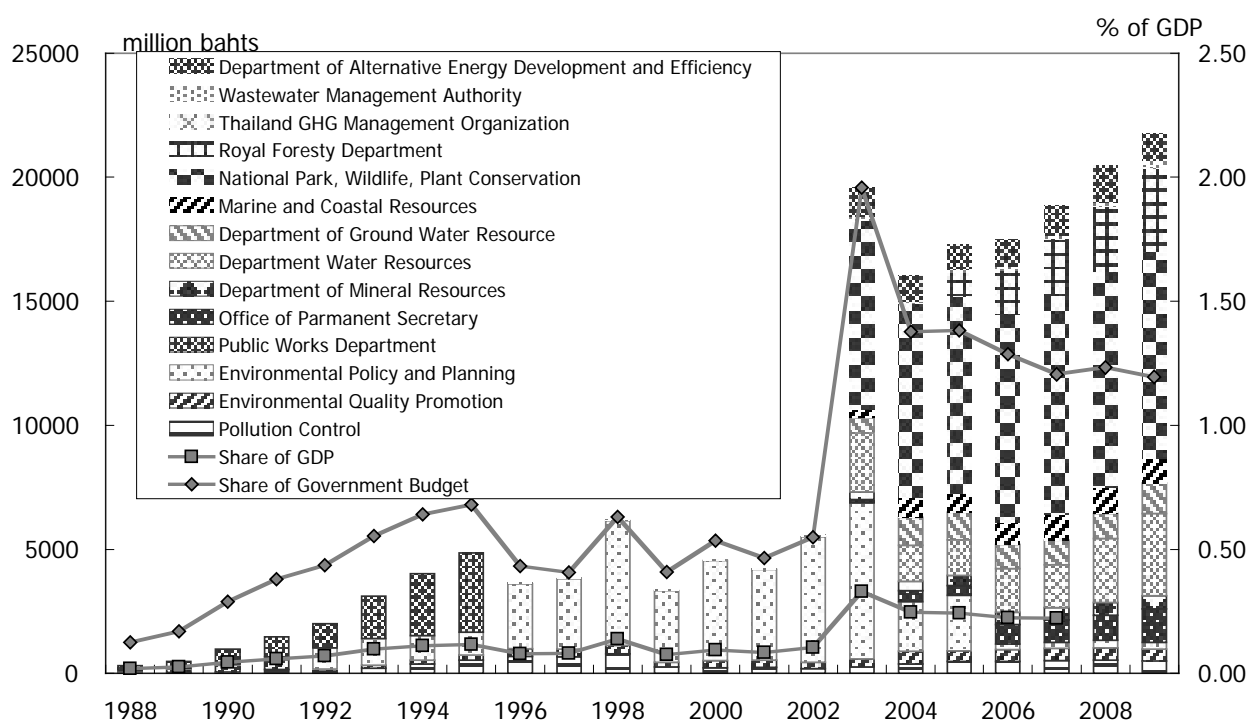
Source: Asian Development Bank, Key Indicators for Asia and Pacific, each year.

Figure 3-2 Export Values in Thailand by Destination



Source: IMF, Direction of Trade Statistics, each year.

Figure 3-3 Government Environmental Expenditure in Thailand



Source: Statistical Yearbook of Thailand, each year.

Appendix: Prime Minister in Thailand after Democratization

Period	Name	Affiliation
1992	Anand Panyarachun	
1992-95	Chuan Leekpai (1)	Democratic Party
1995-96	Banharn Silpaarcha	Thai Nation Party
1996-97	Chavalit Yongchaiyudh	New Aspiration Party
1997-2001	Chuan Leekpai (2)	Democratic Party
2001-2006	Thaksin Shinawatra	Thai Rak Thai Party
2006-2008	Surayud Chulanont	Military
2008	Samak Sundaravej	People Power Party
2008	Somchai Wongsawat	People Power Party
2008-2011	Abhisit Vejjajiva	Democratic Party
2011-	Yingluck Shinawatra	Pheu Thai Party